

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Perri Fagin	Team: Squad #5	CCRB Case #: 201610558	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/23/2016 8:30 PM	Location of Incident: Intersection of Prince Street and Tillary Street; 84th Precinct stationhouse	Precinct: 84	18 Mo. SOL 6/23/2018	EO SOL 6/23/2018	
Date/Time CV Reported Thu, 12/29/2016 9:02 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 12/29/2016 9:02 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Julio Acuria	01077	933593	084 PCT
2. POM Paul Kogan	16446	951877	084 PCT
3. POM Kevin Chow	14731	951610	084 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Chow	Abuse: On December 23, 2016, at the intersection of Prince Street and Tillary Street in Brooklyn, Police Officer Kevin Chow stopped § 87(2)(b)	
B.POM Paul Kogan	Abuse: On December 23, 2016, at the intersection of Prince Street and Tillary Street in Brooklyn, Police Officer Paul Kogan stopped § 87(2)(b)	
C.POM Paul Kogan	Force: On December 23, 2016, at the intersection of Prince Street and Tillary Street in Brooklyn, Police Officer Paul Kogan pointed his gun at § 87(2)(b)	
D.POM Paul Kogan	Abuse: On December 23, 2016, at the intersection of Prince Street and Tillary Street in Brooklyn, Police Officer Paul Kogan refused to provide his name and shield number to § 87(2)(b)	
E.SGT Julio Acuria	Abuse: On December 28, 2016, at the 84th Precinct stationhouse, Sergeant Julio Acuria did not process § 87(2)(b)'s complaint regarding officers.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on-line on December 29, 2016. On December 23, 2016, at approximately 8:30 p.m., § 87(2)(b)'s motorcycle battery died and he walked his motorcycle up Prince Street in Brooklyn, hoping to get a boost at the nearby FDNY or NYPD stationhouses. PO Paul Kogan and PO Kevin Chow, both of the 84th Precinct, pulled up diagonally in front of § 87(2)(b) in their unmarked SUV, cutting him off (**Allegations A and B**). Immediately after PO Kogan exited the vehicle, he drew his gun and pointed it at § 87(2)(b) (**Allegation C**). PO Kogan requested § 87(2)(b)'s identification, and § 87(2)(b) replied, "I'd like to see your ID." § 87(2)(b) produced his identification and gave it to PO Kogan. PO Kogan glanced at it, returned it to § 87(2)(b) and the officers walked toward the unmarked SUV. § 87(2)(b) said, "Wait a minute, you still have not told me who you are." PO Kogan reached his hand inside his jacket and pulled out a small shield that hung around his neck. PO Kogan's fingers were covering most of the shield, and § 87(2)(b) could not see it (**Allegation D**). The officers left in the unmarked SUV.

On December 28, 2016, at approximately 10:30 p.m., § 87(2)(b) went to the 84th Precinct stationhouse to file a complaint. He spoke with Sgt. Julio Acuria of the 84th Precinct. § 87(2)(b) requested to file a complaint against PO Kogan and PO Chow, but Sgt. Acuria informed him that he had no complaint worksheets and referred § 87(2)(b) to 311 (**Allegation E**).

These incidents did not result in any arrests or summonses. § 87(4-b), § 87(2)(g)

No video footage of these incidents was available.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation § 87(2)(b).
- § 87(2)(b) has not been criminally convicted in New York City in the last 10 years (Board Review 02).
- As of February 16, 2017, § 87(2)(b) has not filed a Notice of Claim with the New York City Comptroller's Office regarding this incident (Board Review 01).

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s second CCRB complaint. § 87(2)(b)
- PO Kogan has been a member-of-service for five years and has two prior CCRB complaints filed against him involving seven total allegations, one of which was substantiated. In CCRB case 201307407, the Board substantiated a physical force allegation against PO Kogan and recommended command discipline, however the NYPD took no disciplinary action. Additionally, PO Kogan has one previous refusal to provide name/shield number allegation against him in the same case, however the investigation determined the victim to be uncooperative.
- PO Chow has been a member-of-service for five years and this is the first CCRB complaint filed against him.

Potential Issues

- Although video footage was subpoenaed from two nearby locations, the investigation was unable to locate any footage capturing the incident. One location's security cameras did not capture any activity whatsoever, and this footage was not collected by the CCRB. The other location's cameras captured pedestrians on the sidewalk, but did not contain any aspects of the incident.

Findings and Recommendations

Allegation A – Abuse of Authority: On December 23, 2016, at Prince Street and Tillary Street in Brooklyn, Police Officer Kevin Chow stopped § 87(2)(b)

Allegation B – Abuse of Authority: On December 23, 2016, at Prince Street and Tillary Street in Brooklyn, Police Officer Paul Kogan stopped § 87(2)(b)

It is undisputed that § 87(2)(b) was pushing his motorcycle up Prince Street, a one-way, one-lane street with a lane for parked cars on both sides, towards Tillary Street, when he was stopped by PO Kogan and PO Chow. PO Chow, the operator of the officers' unmarked SUV, pulled over their vehicle diagonally in front of § 87(2)(b).

§ 87(2)(b) (Board Review 04) testified that immediately after he left 2 Bros. Pizza on Flatbush Avenue, he tried to drive away on his black Kawasaki Ninja motorcycle, however he found out that his battery had died. § 87(2)(b) pushed his motorcycle up Prince Street, towards the nearby FDNY and NYPD stationhouses, hoping that they would have booster cables to jumpstart his battery. When PO Chow and PO Kogan pulled over diagonally in front of § 87(2)(b) they cut him off and immediately exited their vehicle.

PO Chow (Board Review 05) testified that he was operating the vehicle that he and PO Kogan were in, when they noticed a traffic build up stretching approximately one block down Prince Street. § 87(2)(b) was first observed when PO Kogan stuck his head out of the passenger window and noticed § 87(2)(b) walking down Prince Street while pushing his motorcycle in the center-right of the street. PO Chow did not recall how PO Kogan conveyed what he saw to him, but knew that one of them said, "We should stop this guy. He's blocking traffic." PO Chow attributed the decision to stop § 87(2)(b) to both himself and PO Kogan. PO Chow suspected § 87(2)(b) of committing motorcycle theft, as he referred to the location as a "high crime area" known for motorcycle theft, but PO Chow was unsure what exact area of the Precinct was known for this crime. PO Chow's memo book (Board Review 06) documented § 87(2)(b)'s stop; He noted that § 87(2)(b) was stopped for pushing a motorcycle in the middle of the street, causing traffic and that § 87(2)(b) was suspected of grand larceny.

PO Kogan (Board Review 07) testified that PO Chow was operating the vehicle while the officers drove on Myrtle Avenue, where they saw § 87(2)(b) pushing his motorcycle. PO Kogan described this area as highly prone to grand larceny of automobiles, including motorcycles, which PO Kogan knew from his general experiences as an anti-crime officer. When PO Kogan first observed § 87(2)(b) pushing his motorcycle, he suspected him of committing theft as he did not believe that § 87(2)(b) possessed the motorcycle's keys. § 87(2)(b) turned onto Prince Street, and PO Kogan noticed a traffic build-up of approximately seven or eight cars behind him, so the officers made a U-turn and also turned onto Prince Street. PO Chow pulled over their vehicle diagonally to the right at the corner of Prince Street and Tillary Street, a little less than five feet in front of § 87(2)(b).

A police officer may stop and detain a person in a public place when he entertains a reasonable suspicion that the person has committed, is committing or is about to commit a crime. Reasonable suspicion may not be based on a vague or un-particularized hunch. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 09).

§ 87(2)(g)

Allegation C – Force: On December 23, 2016, at Prince Street and Tillary Street in Brooklyn, Police Officer Paul Kogan pointed his gun at § 87(2)(b)

§ 87(2)(b) testified that when PO Kogan drew his firearm, he initially pointed it at the ground, standing three to four feet away from him. PO Kogan ordered § 87(2)(b) to put his hands on the bumper of the SUV, and § 87(2)(b) told PO Kogan that he did not know who he was, but that he was a Marine combat veteran and did not respond well to unholstered weapons.

§ 87(2)(b) asked PO Kogan to holster his firearm. PO Kogan raised his firearm, and pointed it at § 87(2)(b)'s genitals. § 87(2)(b) told PO Kogan that he would put his hands on the bumper, but first, he would need to put his motorcycle on its stand. § 87(2)(b) did so and then placed his hands on the SUV's bumper. PO Kogan holstered his firearm approximately one minute after it had been drawn. § 87(2)(b) testified that PO Chow had walked around the rear of the unmarked SUV before PO Kogan drew his weapon, and simply stood by during this interaction.

PO Kogan testified that once he and PO Chow caught up to § 87(2)(b), § 87(2)(b) mounted his motorcycle. However, PO Kogan was later unable to articulate when § 87(2)(b) actually switched from pushing his motorcycle to mounting it. PO Kogan did not think that § 87(2)(b) was actually riding or operating the motorcycle when he allegedly mounted it, and he was unsure if the motorcycle was even moving. PO Kogan did not believe that § 87(2)(b) possessed the keys to the motorcycle. PO Kogan testified that PO Chow pulled over the unmarked SUV just inside of the crosswalk, directly in front of § 87(2)(b) to "prevent the motorcycle from taking off," and "trying to cut off any forward movement of the motorcycle." PO Kogan's testimony was inconsistent regarding when PO Chow exited the unmarked SUV, and where PO Chow was throughout this incident.

PO Kogan ordered § 87(2)(b) not to move and to dismount the motorcycle. § 87(2)(b) initially only had one hand on his handlebar, but after PO Kogan gave this order, § 87(2)(b) placed his second hand on the handlebar and leaned forward. PO Kogan interpreted this body language as § 87(2)(b) indicating that he would drive away and hit PO Kogan. Within seconds of PO Kogan exiting his vehicle, he drew his firearm. PO Kogan initially testified three separate times that he "put § 87(2)(b) at gunpoint," however PO Kogan was unable to articulate where his firearm was pointed, and did not know if he even pointed it at § 87(2)(b). PO Kogan again ordered § 87(2)(b) to dismount the motorcycle and § 87(2)(b).

immediately complied. PO Kogan holstered his weapon, which was unholstered for a total of approximately four to five seconds.

PO Kogan testified that he drew his weapon because he feared that § 87(2)(b) would drive into him. PO Kogan cited his reasons for fearing for his life as § 87(2)(b) mounting his motorcycle, the nearby presence of the Brooklyn-Queens Expressway, their presence in a “GLA-prone location,” PO Kogan’s prior experiences making GLA arrests, and § 87(2)(b) leaning forward and “making it look like he was going to take off and run [PO Kogan] over with a motorcycle.”

PO Kogan’s memo book entry (Board Review 08) description of the incident was written on a fly page and excludes the unholstering of his firearm, but includes § 87(2)(b) mounting his motorcycle. PO Kogan did not think this interaction elevated to a level three stop.

PO Chow testified that § 87(2)(b) and PO Kogan were out of his sight for approximately five seconds while he walked around the rear of the unmarked SUV. PO Chow denied ever witnessing § 87(2)(b) make any furtive movements, or do anything to make him fear for his safety. PO Chow denied witnessing PO Kogan draw his firearm or point it at § 87(2)(b). PO Chow also denied ever learning that this happened. PO Chow never testified, nor did he document in his memo book, that § 87(2)(b) ever mounted his motorcycle.

To justifiably point his gun, an officer must possess an articulable belief that the potential for serious physical injury is present. NYPD Patrol Guide, Procedure 221-01 (Board Review 12).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: On December 23, 2016, at Prince Street and Tillary Street in Brooklyn, Police Officer Paul Kogan refused to provide his name and shield number to § 87(2)(b)

It is undisputed that PO Kogan and PO Chow wore plainclothes, with their shields on a chain hanging around their necks. It is further undisputed that they drove an unmarked vehicle.

§ 87(2)(b) testified that, once PO Kogan holstered his gun, he requested § 87(2)(b) § 87(2)(b) S identification, to which § 87(2)(b) responded, “I’d like to see your ID.” § 87(2)(b) produced his identification and gave it to PO Kogan. PO Kogan briefly looked at his identification, returned it to § 87(2)(b) and began to return to his vehicle. § 87(2)(b) said, “Wait a minute, you still have not told me who you are.” PO Kogan reached his hand into the inside of his jacket and pulled out a small metal shield that hung around his neck for about one-and-a-half seconds. PO Kogan’s fingers were covering most of the shield, which was approximately two inches long, and § 87(2)(b) could barely see it. PO Kogan and PO Chow then got into their vehicle and left.

While § 87(2)(b) did not ask directly for PO Kogan’s name and shield number, the investigation found that by allegedly asking PO Kogan who he was, § 87(2)(b) was inquiring into these identifying details.

PO Kogan denied that § 87(2)(b) ever produced his identification, and testified that § 87(2)(b) denied PO Kogan’s requests to see his identification. PO Kogan testified that § 87(2)(b) never requested PO Kogan’s identifying details, and PO Kogan denied refusing to provide these to § 87(2)(b). PO Kogan testified that he initially had his shield tucked underneath his shirt, but before he exited his vehicle and approached § 87(2)(b) he removed his shield from underneath his shirt so that it was clearly visible outside his outermost garment. PO Kogan denied putting his hand on his shield to block § 87(2)(b) from seeing his information.

While PO Chow corroborated § 87(2)(b) S testimony that § 87(2)(b) produced his identification, PO Chow testified that he did not remember if § 87(2)(b) requested PO Kogan’s identification throughout the incident, nor did PO Chow witness PO Kogan refuse to provide § 87(2)(b) with these details. PO Chow did not remember if his or PO Kogan’s shields were displayed throughout this incident, or if they were tucked under their shirts. PO Chow did not recall if PO Kogan pulled his shield out at any point to show § 87(2)(b) § 87(2)(b) never complained that he could not obtain an officer’s identifying information.

§ 87(2)(g)

Allegation E – Abuse of Authority: On December 23, 2016, at the 84th Precinct stationhouse, Sergeant Julio Acuria refused to process § 87(2)(b) S civilian complaint.

It is undisputed that § 87(2)(b) went to the 84th Precinct stationhouse to file a complaint where he spoke with Sgt. Acuria. It is further undisputed that when § 87(2)(b) requested to file a complaint, Sgt. Acuria told § 87(2)(b) that he was unable to process the complaint as he did not have any complaint worksheets, and advised § 87(2)(b) to call 311.

Sgt. Acuria testified that he apologized to § 87(2)(b) multiple times, and when § 87(2)(b) asked why there were no complaint worksheets, Sgt. Acuria explained that an officer had recently passed away so it had been a hectic week with funeral-related events, so many personnel had been absent. During his CCRB interview, Sgt. Acuria explained that he may be outdated on his understanding of the process of filing a civilian complaint but, to the best of his knowledge, there are two ways to file a complaint: an officer provides a civilian with a complaint worksheet and the officer calls the complaint in and makes a command log entry, or the civilian can do it on their own by calling 311. Sgt. Acuria did not document § 87(2)(b)'s appearance at the stationhouse or his complaint.

An officer must process a civilian complaint when made in person, which includes preparation of the civilian complaint report form in the complainant's own handwriting, furnishing assistance to the complainants, and having the individuals sign the complaint form in the appropriate section. An officer must report all misconduct complaints and inform the CCRB immediately by telephone. NYPD Patrol Guide, Section 207-31 (Board Review 11).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(4-b), § 87(2)(g)
[REDACTED]

§ 87(4-b), § 87(2)(g)
[REDACTED]

§ 87(4-b), § 87(2)(g)

[Redacted text block]

Squad: 5

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date